

AMENDED IN SENATE MARCH 16, 2011

SENATE BILL

No. 190

Introduced by Senator Lowenthal

February 8, 2011

An act to amend Sections 7159, 7159.5, 7159.14, and 8513 of the Business and Professions Code, to amend Section 8422 of the Civil Code, and to amend Section 66499.7 of the Government Code, relating to mechanics liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 190, as amended, Lowenthal. Mechanics liens.

The California Constitution provides that laborers of every class who have worked upon or have furnished material for a property have a lien upon that property for the value of the labor done and material furnished. The California Constitution requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens. Existing law, operative July 1, 2012, recodified and revised the law for enforcing mechanics liens. Existing law provides that certain erroneous information contained in a claim of lien does not invalidate the claim of lien, except as specified.

This bill, operative July 1, 2012, would make various technical, conforming changes related to the recodification of the law for enforcing mechanics liens. The bill would also require that a person forfeit his or her lien if the person willfully includes labor or materials in a lien claim that were not furnished to the property in the claim.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7159 of the Business and Professions Code is amended to read:

7159. (a) (1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment.

(2) This section does not apply to service and repair contracts that are subject to Section 7159.10, if the contract for the applicable services complies with Sections 7159.10 to 7159.14, inclusive.

(3) This section does not apply to the sale, installation, and servicing of a fire alarm sold in conjunction with an alarm system, as defined in subdivision (n) of Section 7590.1, if all costs attributable to making the fire alarm system operable, including sale and installation costs, do not exceed five hundred dollars (\$500), and the licensee complies with the requirements set forth in Section 7159.9.

(4) This section does not apply to any costs associated with monitoring a burglar or fire alarm system.

(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

(b) For purposes of this section, “home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder, if the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500). “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home

1 improvement salesperson, and an owner or a tenant, regardless of
2 the number of residence or dwelling units contained in the building
3 in which the tenant resides, which provides for the sale, installation,
4 or furnishing of home improvement goods or services.

5 (c) In addition to the specific requirements listed under this
6 section, every home improvement contract and any person subject
7 to licensure under this chapter or his or her agent or salesperson
8 shall comply with all of the following:

9 (1) The writing shall be legible.

10 (2) Any printed form shall be readable. Unless a larger typeface
11 is specified in this article, text in any printed form shall be in at
12 least 10-point typeface and the headings shall be in at least 10-point
13 boldface type.

14 (3) (A) Before any work is started, the contractor shall give the
15 buyer a copy of the contract signed and dated by both the contractor
16 and the buyer. The buyer's receipt of the copy of the contract
17 initiates the buyer's rights to cancel the contract pursuant to
18 Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

19 (B) The contract shall contain on the first page, in a typeface
20 no smaller than that generally used in the body of the document,
21 both of the following:

22 (i) The date the buyer signed the contract.

23 (ii) The name and address of the contractor to which the
24 applicable "Notice of Cancellation" is to be mailed, immediately
25 preceded by a statement advising the buyer that the "Notice of
26 Cancellation" may be sent to the contractor at the address noted
27 on the contract.

28 (4) The contract shall include a statement that, upon satisfactory
29 payment being made for any portion of the work performed, the
30 contractor, prior to any further payment being made, shall furnish
31 to the person contracting for the home improvement or swimming
32 pool work a full and unconditional release from any potential lien
33 claimant claim or ~~mechanic's~~ *mechanics* lien authorized pursuant
34 to Sections 8400 and 8404 of the Civil Code for that portion of
35 the work for which payment has been made.

36 (5) A change-order form for changes or extra work shall be
37 incorporated into the contract and shall become part of the contract
38 only if it is in writing and signed by the parties prior to the
39 commencement of any work covered by a change order.

1 (6) The contract shall contain, in close proximity to the
2 signatures of the owner and contractor, a notice stating that the
3 owner or tenant has the right to require the contractor to have a
4 performance and payment bond.

5 (7) If the contract provides for a contractor to furnish joint
6 control, the contractor shall not have any financial or other interest
7 in the joint control.

8 (8) The provisions of this section are not exclusive and do not
9 relieve the contractor from compliance with any other applicable
10 provision of law.

11 (d) A home improvement contract and any changes to the
12 contract shall be in writing and signed by the parties to the contract
13 prior to the commencement of work covered by the contract or an
14 applicable change order and, except as provided in paragraph (8)
15 of subdivision (a) of Section 7159.5, shall include or comply with
16 all of the following:

17 (1) The name, business address, and license number of the
18 contractor.

19 (2) If applicable, the name and registration number of the home
20 improvement salesperson that solicited or negotiated the contract.

21 (3) The following heading on the contract form that identifies
22 the type of contract in at least 10-point boldface type: "Home
23 Improvement."

24 (4) The following statement in at least 12-point boldface type:
25 "You are entitled to a completely filled in copy of this agreement,
26 signed by both you and the contractor, before any work may be
27 started."

28 (5) The heading: "Contract Price," followed by the amount of
29 the contract in dollars and cents.

30 (6) If a finance charge will be charged, the heading: "Finance
31 Charge," followed by the amount in dollars and cents. The finance
32 charge is to be set out separately from the contract amount.

33 (7) The heading: "Description of the Project and Description
34 of the Significant Materials to be Used and Equipment to be
35 Installed," followed by a description of the project and a description
36 of the significant materials to be used and equipment to be installed.
37 For swimming pools, the project description required under this
38 paragraph also shall include a plan and scale drawing showing the
39 shape, size, dimensions, and the construction and equipment
40 specifications.

1 (8) If a downpayment will be charged, the details of the
2 downpayment shall be expressed in substantially the following
3 form, and shall include the text of the notice as specified in
4 subparagraph (C):

5 (A) The heading: “Downpayment.”

6 (B) A space where the actual downpayment appears.

7 (C) The following statement in at least 12-point boldface type:

8
9 “THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10
10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS
11 LESS.”
12

13 (9) If payments, other than the downpayment, are to be made
14 before the project is completed, the details of these payments,
15 known as progress payments, shall be expressed in substantially
16 the following form, and shall include the text of the statement as
17 specified in subparagraph (C):

18 (A) A schedule of progress payments shall be preceded by the
19 heading: “Schedule of Progress Payments.”

20 (B) Each progress payment shall be stated in dollars and cents
21 and specifically reference the amount of work or services to be
22 performed and materials and equipment to be supplied.

23 (C) The section of the contract reserved for the progress
24 payments shall include the following statement in at least 12-point
25 boldface type:

26
27 “The schedule of progress payments must specifically describe
28 each phase of work, including the type and amount of work or
29 services scheduled to be supplied in each phase, along with the
30 amount of each proposed progress payment. IT IS AGAINST THE
31 LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR
32 WORK NOT YET COMPLETED, OR FOR MATERIALS NOT
33 YET DELIVERED. HOWEVER, A CONTRACTOR MAY
34 REQUIRE A DOWNPAYMENT.”
35

36 (10) The contract shall address the commencement of work to
37 be performed in substantially the following form:

38 (A) A statement that describes what constitutes substantial
39 commencement of work under the contract.

40 (B) The heading: “Approximate Start Date.”

1 (C) The approximate date on which work will be commenced.
2 (11) The estimated completion date of the work shall be
3 referenced in the contract in substantially the following form:

4 (A) The heading: "Approximate Completion Date."

5 (B) The approximate date of completion.

6 (12) If applicable, the heading: "List of Documents to be
7 Incorporated into the Contract," followed by the list of documents
8 incorporated into the contract.

9 (13) The heading: "Note About Extra Work and Change Orders,"
10 followed by the following statement:

11
12 "Extra Work and Change Orders become part of the contract
13 once the order is prepared in writing and signed by the parties prior
14 to the commencement of work covered by the new change order.
15 The order must describe the scope of the extra work or change,
16 the cost to be added or subtracted from the contract, and the effect
17 the order will have on the schedule of progress payments."
18

19 (e) Except as provided in paragraph (8) of subdivision (a) of
20 Section 7159.5, all of the following notices shall be provided to
21 the owner as part of the contract form as specified or, if otherwise
22 authorized under this subdivision, may be provided as an
23 attachment to the contract:

24 (1) A notice concerning commercial general liability insurance.
25 This notice may be provided as an attachment to the contract if
26 the contract includes the following statement: "A notice concerning
27 commercial general liability insurance is attached to this contract."
28 The notice shall include the heading "Commercial General Liability
29 Insurance (CGL)," followed by whichever of the following
30 statements is both relevant and correct:

31 (A) "(The name on the license or 'This contractor') does not
32 carry commercial general liability insurance."

33 (B) "(The name on the license or 'This contractor') carries
34 commercial general liability insurance written by (the insurance
35 company). You may call (the insurance company) at _____
36 to check the contractor's insurance coverage."

37 (C) "(The name on the license or 'This contractor') is
38 self-insured."

39 (D) "(The name on the license or 'This contractor') is a limited
40 liability company that carries liability insurance or maintains other

1 security as required by law. You may call (the insurance company
2 or trust company or bank) at _____ to check on the contractor's
3 insurance coverage or security."

4 (2) A notice concerning workers' compensation insurance. This
5 notice may be provided as an attachment to the contract if the
6 contract includes the statement: "A notice concerning workers'
7 compensation insurance is attached to this contract." The notice
8 shall include the heading "Workers' Compensation Insurance"
9 followed by whichever of the following statements is correct:

10 (A) "(The name on the license or 'This contractor') has no
11 employees and is exempt from workers' compensation
12 requirements."

13 (B) "(The name on the license or 'This contractor') carries
14 workers' compensation insurance for all employees."

15 (3) A notice that provides the buyer with the following
16 information about the performance of extra or change-order work:

17 (A) A statement that the buyer may not require a contractor to
18 perform extra or change-order work without providing written
19 authorization prior to the commencement of work covered by the
20 new change order.

21 (B) A statement informing the buyer that extra work or a change
22 order is not enforceable against a buyer unless the change order
23 also identifies all of the following in writing prior to the
24 commencement of work covered by the new change order:

25 (i) The scope of work encompassed by the order.

26 (ii) The amount to be added or subtracted from the contract.

27 (iii) The effect the order will make in the progress payments or
28 the completion date.

29 (C) A statement informing the buyer that the contractor's failure
30 to comply with the requirements of this paragraph does not
31 preclude the recovery of compensation for work performed based
32 upon legal or equitable remedies designed to prevent unjust
33 enrichment.

34 (4) A notice with the heading—~~"Mechanics"~~ "*Mechanics Lien*
35 Warning" written as follows:

36
37 ~~"MECHANICS"~~ "*MECHANICS LIEN WARNING:*

38
39 Anyone who helps improve your property, but who is not paid,
40 may record what is called a ~~mechanics~~² *mechanics* lien on your

1 property. A ~~mechanics'~~ *mechanics* lien is a claim, like a mortgage
2 or home equity loan, made against your property and recorded
3 with the county recorder.

4 Even if you pay your contractor in full, unpaid subcontractors,
5 suppliers, and laborers who helped to improve your property may
6 record ~~mechanics'~~ *mechanics* liens and sue you in court to foreclose
7 the lien. If a court finds the lien is valid, you could be forced to
8 pay twice or have a court officer sell your home to pay the lien.
9 Liens can also affect your credit.

10 To preserve their right to record a lien, each subcontractor and
11 material supplier must provide you with a document called a
12 ~~Preliminary~~ 'Preliminary Notice.' This notice is not a lien. The
13 purpose of the notice is to let you know that the person who sends
14 you the notice has the right to record a lien on your property if he
15 or she is not paid.

16 BE CAREFUL. The Preliminary Notice can be sent up to 20
17 days after the subcontractor starts work or the supplier provides
18 material. This can be a big problem if you pay your contractor
19 before you have received the Preliminary Notices.

20 You will not get Preliminary Notices from your prime contractor
21 or from laborers who work on your project. The law assumes that
22 you already know they are improving your property.

23 PROTECT YOURSELF FROM LIENS. You can protect
24 yourself from liens by getting a list from your contractor of all the
25 subcontractors and material suppliers that work on your project.
26 Find out from your contractor when these subcontractors started
27 work and when these suppliers delivered goods or materials. Then
28 wait 20 days, paying attention to the Preliminary Notices you
29 receive.

30 PAY WITH JOINT CHECKS. One way to protect yourself is
31 to pay with a joint check. When your contractor tells you it is time
32 to pay for the work of a subcontractor or supplier who has provided
33 you with a Preliminary Notice, write a joint check payable to both
34 the contractor and the subcontractor or material supplier.

35 For other ways to prevent liens, visit CSLB's Internet Web site
36 at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

37 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING
38 A LIEN PLACED ON YOUR HOME. This can mean that you
39 may have to pay twice, or face the forced sale of your home to pay
40 what you owe."

1
2 (5) The following notice shall be provided in at least 12-point
3 typeface:

4
5 “Information about the Contractors’ State License Board (CSLB):
6 CSLB is the state consumer protection agency that licenses and
7 regulates construction contractors.

8 Contact CSLB for information about the licensed contractor you
9 are considering, including information about disclosable
10 complaints, disciplinary actions, and civil judgments that are
11 reported to CSLB.

12 Use only licensed contractors. If you file a complaint against a
13 licensed contractor within the legal deadline (usually four years),
14 CSLB has authority to investigate the complaint. If you use an
15 unlicensed contractor, CSLB may not be able to help you resolve
16 your complaint. Your only remedy may be in civil court, and you
17 may be liable for damages arising out of any injuries to the
18 unlicensed contractor or the unlicensed contractor’s employees.

19 For more information:

20 Visit CSLB’s Internet Web site at www.cslb.ca.gov

21 Call CSLB at 800-321-CSLB (2752)

22 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

23
24 (6) (A) The notice set forth in subparagraph (B) and entitled
25 “Three-Day Right to Cancel,” shall be provided to the buyer unless
26 the contract is:

27 (i) Negotiated at the contractor’s place of business.

28 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in
29 paragraph (7).

30 (iii) Subject to licensure under the Alarm Company Act (Chapter
31 11.6 (commencing with Section 7590)), provided the alarm
32 company licensee complies with Sections 1689.5, 1689.6, and
33 1689.7 of the Civil Code, as applicable.

34
35 (B) “Three-Day Right to Cancel

36 You, the buyer, have the right to cancel this contract within three
37 business days. You may cancel by e-mailing, mailing, faxing, or
38 delivering a written notice to the contractor at the contractor’s
39 place of business by midnight of the third business day after you
40 received a signed and dated copy of the contract that includes this

1 notice. Include your name, your address, and the date you received
2 the signed copy of the contract and this notice.

3 If you cancel, the contractor must return to you anything you
4 paid within 10 days of receiving the notice of cancellation. For
5 your part, you must make available to the contractor at your
6 residence, in substantially as good condition as you received them,
7 goods delivered to you under this contract or sale. Or, you may,
8 if you wish, comply with the contractor's instructions on how to
9 return the goods at the contractor's expense and risk. If you do
10 make the goods available to the contractor and the contractor does
11 not pick them up within 20 days of the date of your notice of
12 cancellation, you may keep them without any further obligation.
13 If you fail to make the goods available to the contractor, or if you
14 agree to return the goods to the contractor and fail to do so, then
15 you remain liable for performance of all obligations under the
16 contract.”

17
18 (C) The “Three-Day Right to Cancel” notice required by this
19 paragraph shall comply with all of the following:

20 (i) The text of the notice is at least 12-point boldface type.

21 (ii) The notice is in immediate proximity to a space reserved
22 for the owner's signature.

23 (iii) The owner acknowledges receipt of the notice by signing
24 and dating the notice form in the signature space.

25 (iv) The notice is written in the same language, e.g., Spanish,
26 as that principally used in any oral sales presentation.

27 (v) The notice may be attached to the contract if the contract
28 includes, in at least 12-point boldface type, a checkbox with the
29 following statement: “The law requires that the contractor give
30 you a notice explaining your right to cancel. Initial the checkbox
31 if the contractor has given you a ‘Notice of the Three-Day Right
32 to Cancel.’ ”

33 (vi) The notice shall be accompanied by a completed form in
34 duplicate, captioned “Notice of Cancellation,” which also shall be
35 attached to the agreement or offer to purchase and be easily
36 detachable, and which shall contain the following statement written
37 in the same language, e.g., Spanish, as used in the contract:

38
39 “Notice of Cancellation”

40 /enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____,

/name of seller/

at _____

/address of seller’s place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer’s signature)

(7) (A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is

1 written for the repair or restoration of residential premises damaged
2 by any sudden or catastrophic event for which a state of emergency
3 has been declared by the President of the United States or the
4 Governor, or for which a local emergency has been declared by
5 the executive officer or governing body of any city, county, or city
6 and county:

7
8 “Seven-Day Right to Cancel

9 You, the buyer, have the right to cancel this contract within seven
10 business days. You may cancel by e-mailing, mailing, faxing, or
11 delivering a written notice to the contractor at the contractor’s
12 place of business by midnight of the seventh business day after
13 you received a signed and dated copy of the contract that includes
14 this notice. Include your name, your address, and the date you
15 received the signed copy of the contract and this notice.

16 If you cancel, the contractor must return to you anything you
17 paid within 10 days of receiving the notice of cancellation. For
18 your part, you must make available to the contractor at your
19 residence, in substantially as good condition as you received them,
20 goods delivered to you under this contract or sale. Or, you may,
21 if you wish, comply with the contractor’s instructions on how to
22 return the goods at the contractor’s expense and risk. If you do
23 make the goods available to the contractor and the contractor does
24 not pick them up within 20 days of the date of your notice of
25 cancellation, you may keep them without any further obligation.
26 If you fail to make the goods available to the contractor, or if you
27 agree to return the goods to the contractor and fail to do so, then
28 you remain liable for performance of all obligations under the
29 contract.”

30
31 (B) The “Seven-Day Right to Cancel” notice required by this
32 subdivision shall comply with all of the following:

- 33 (i) The text of the notice is at least 12-point boldface type.
34 (ii) The notice is in immediate proximity to a space reserved
35 for the owner’s signature.
36 (iii) The owner acknowledges receipt of the notice by signing
37 and dating the notice form in the signature space.
38 (iv) The notice is written in the same language, e.g., Spanish,
39 as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of seller's place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer's signature)

SEC. 2. Section 7159.5 of the Business and Professions Code, as amended by Section 6 of Chapter 697 of the Statutes of 2010, is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

1 (5) Except for a downpayment, the contractor may neither
2 request nor accept payment that exceeds the value of the work
3 performed or material delivered.

4 (6) Upon any payment by the person contracting for home
5 improvement, and prior to any further payment being made, the
6 contractor shall, if requested, obtain and furnish to the person a
7 full and unconditional release from any potential lien claimant
8 claim or mechanics lien authorized pursuant to Sections 8400 and
9 8404 of the Civil Code for any portion of the work for which
10 payment has been made. The person contracting for home
11 improvement may withhold all further payments until these releases
12 are furnished.

13 (7) If the contract provides for a payment of a salesperson's
14 commission out of the contract price, that payment shall be made
15 on a pro rata basis in proportion to the schedule of payments made
16 to the contractor by the disbursing party in accordance with
17 paragraph (4).

18 (8) A contractor furnishing a performance and payment bond,
19 lien and completion bond, or a bond equivalent or joint control
20 approved by the registrar covering full performance and payment
21 is exempt from paragraphs (3), (4), and (5), and need not include,
22 as part of the contract, the statement regarding the downpayment
23 specified in subparagraph (C) of paragraph (8) of subdivision (d)
24 of Section 7159, the details and statement regarding progress
25 payments specified in paragraph (9) of subdivision (d) of Section
26 7159, or the Mechanics Lien Warning specified in paragraph (4)
27 of subdivision (e) of Section 7159. A contractor furnishing these
28 bonds, bond equivalents, or a joint control approved by the registrar
29 may accept payment prior to completion. If the contract provides
30 for a contractor to furnish joint control, the contractor shall not
31 have any financial or other interest in the joint control.

32 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)
33 by a licensee or a person subject to be licensed under this chapter,
34 or by his or her agent or salesperson, is a misdemeanor punishable
35 by a fine of not less than one hundred dollars (\$100) nor more than
36 five thousand dollars (\$5,000), or by imprisonment in a county
37 jail not exceeding one year, or by both that fine and imprisonment.

38 (1) An indictment or information against a person who is not
39 licensed but who is required to be licensed under this chapter shall
40 be brought, or a criminal complaint filed, for a violation of this

1 section, in accordance with paragraph (4) of subdivision (d) of
2 Section 802 of the Penal Code, within four years from the date of
3 the contract or, if the contract is not reduced to writing, from the
4 date the buyer makes the first payment to the contractor.

5 (2) An indictment or information against a person who is
6 licensed under this chapter shall be brought, or a criminal complaint
7 filed, for a violation of this section, in accordance with paragraph
8 (2) of subdivision (d) of Section 802 of the Penal Code, within
9 two years from the date of the contract or, if the contract is not
10 reduced to writing, from the date the buyer makes the first payment
11 to the contractor.

12 (3) The limitations on actions in this subdivision shall not apply
13 to any administrative action filed against a licensed contractor.

14 (c) Any person who violates this section as part of a plan or
15 scheme to defraud an owner or tenant of a residential or
16 nonresidential structure, including a mobilehome or manufactured
17 home, in connection with the offer or performance of repairs to
18 the structure for damage caused by a natural disaster, shall be
19 ordered by the court to make full restitution to the victim based
20 on the person's ability to pay, as defined in subdivision (e) of
21 Section 1203.1b of the Penal Code. In addition to full restitution,
22 and imprisonment authorized by this section, the court may impose
23 a fine of not less than five hundred dollars (\$500) nor more than
24 twenty-five thousand dollars (\$25,000), based upon the defendant's
25 ability to pay. This subdivision applies to natural disasters for
26 which a state of emergency is proclaimed by the Governor pursuant
27 to Section 8625 of the Government Code, or for which an
28 emergency or major disaster is declared by the President of the
29 United States.

30 SEC. 3. Section 7159.14 of the Business and Professions Code,
31 as amended by Section 7 of Chapter 697 of the Statutes of 2010,
32 is amended to read:

33 7159.14. (a) This section applies to a service and repair
34 contract as defined in Section 7159.10. A violation of this section
35 by a licensee or a person subject to be licensed under this chapter,
36 or by his or her agent or salesperson, is cause for discipline.

37 (1) The contract may not exceed seven hundred fifty dollars
38 (\$750).

39 (2) The contract shall be in writing and shall state the agreed
40 contract amount, which may be stated as either a fixed contract

1 amount in dollars and cents or, if a time and materials formula is
2 used, as an estimated contract amount in dollars and cents.

3 (3) The contract amount shall include the entire cost of the
4 contract including profit, labor, and materials, but excluding
5 finance charges.

6 (4) The actual contract amount of a time and materials contract
7 may not exceed the estimated contract amount without written
8 authorization from the buyer.

9 (5) The prospective buyer must have initiated contact with the
10 contractor to request work.

11 (6) The contractor may not sell the buyer goods or services
12 beyond those reasonably necessary to take care of the particular
13 problem that caused the buyer to contact the contractor.

14 (7) No payment may be due before the project is completed.

15 (8) A service and repair contractor may charge only one service
16 charge. For purposes of this chapter, a service charge includes
17 such charges as a service or trip charge, or an inspection fee.

18 (9) A service and repair contractor charging a service charge
19 must disclose in all advertisements that there is a service charge
20 and, when the customer initiates the call for service, must disclose
21 the amount of the service charge.

22 (10) The service and repair contractor must offer to the customer
23 any parts that were replaced.

24 (11) Upon any payment by the buyer, the contractor shall, if
25 requested, obtain and furnish to the buyer a full and unconditional
26 release from any potential lien claimant claim or mechanics lien
27 authorized pursuant to Sections 8400 and 8404 of the Civil Code
28 for any portion of the work for which payment has been made.

29 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of
30 subdivision (a) by a licensee or a person subject to be licensed
31 under this chapter, or by his or her agent or salesperson, is a
32 misdemeanor punishable by a fine of not less than one hundred
33 dollars (\$100) nor more than five thousand dollars (\$5,000), or by
34 imprisonment in a county jail not exceeding one year, or by both
35 that fine and imprisonment.

36 (1) An indictment or information against a person who is not
37 licensed but who is required to be licensed under this chapter shall
38 be brought, or a criminal complaint filed, for a violation of this
39 section, in accordance with paragraph (4) of subdivision (d) of
40 Section 802 of the Penal Code, within four years from the date of

1 the contract or, if the contract is not reduced to writing, from the
2 date the buyer makes the first payment to the contractor.

3 (2) An indictment or information against a person who is
4 licensed under this chapter shall be brought, or a criminal complaint
5 filed, for a violation of this section, in accordance with paragraph
6 (2) of subdivision (d) of Section 802 of the Penal Code, within
7 two years from the date of the contract or, if the contract is not
8 reduced to writing, from the date the buyer makes the first payment
9 to the contractor.

10 (3) The limitations on actions in this subdivision shall not apply
11 to any administrative action filed against a licensed contractor.

12 (c) Any person who violates this section as part of a plan or
13 scheme to defraud an owner or tenant of a residential or
14 nonresidential structure, including a mobilehome or manufactured
15 home, in connection with the offer or performance of repairs to
16 the structure for damage caused by a natural disaster, shall be
17 ordered by the court to make full restitution to the victim based
18 on the person's ability to pay, as defined in subdivision (e) of
19 Section 1203.1b of the Penal Code. In addition to full restitution,
20 and imprisonment authorized by this section, the court may impose
21 a fine of not less than five hundred dollars (\$500) nor more than
22 twenty-five thousand dollars (\$25,000), based upon the defendant's
23 ability to pay. This subdivision applies to natural disasters for
24 which a state of emergency is proclaimed by the Governor pursuant
25 to Section 8625 of the Government Code, or for which an
26 emergency or major disaster is declared by the President of the
27 United States.

28 SEC. 4. Section 8513 of the Business and Professions Code,
29 as amended by Section 9 of Chapter 697 of the Statutes of 2010,
30 is amended to read:

31 8513. (a) The board shall prescribe a form entitled "Notice to
32 Owner" that shall describe, in nontechnical language and in a clear
33 and coherent manner using words with common and everyday
34 meaning, the pertinent provisions of this state's ~~mechanics~~²
35 *mechanics* lien laws and the rights and responsibilities of an owner
36 of property and a registered pest control company thereunder. Each
37 company registered under this chapter, prior to entering into a
38 contract with an owner for work for which a company registration
39 is required, shall give a copy of this "Notice to Owner" to the
40 owner, his or her agent, or the payer.

1 (b) No company that is required to be registered under this
2 chapter shall require or request a waiver of lien rights from any
3 subcontractor, employee, or supplier.

4 (c) Each company registered under this chapter that acts as a
5 subcontractor for another company registered under this chapter
6 shall, within 20 days of commencement of any work for which a
7 company registration is required, give the preliminary notice in
8 accordance with Chapter 2 (commencing with Section 8200) of
9 Title 2 of Part 6 of Division 4 of the Civil Code, to the owner, his
10 or her agent, or the payer.

11 (d) Each company registered under this chapter that acts as a
12 prime contractor for work for which a company registration is
13 required shall, prior to accepting payment for the work, furnish to
14 the owner, his or her agent, or the payer a full and unconditional
15 release from any claim of mechanics lien by any subcontractor
16 entitled to enforce a ~~mechanics~~² *mechanics* lien pursuant to Section
17 8410 of the Civil Code.

18 (e) Each company registered under this chapter that subcontracts
19 to another company registered under this chapter work for which
20 a company registration is required shall furnish to the subcontractor
21 the name of the owner, his or her agent, or the payer.

22 (f) The provisions of this section shall be applicable only to
23 those registered companies, as defined in Section 8506.1, operating
24 pursuant to a Branch 1 or Branch 3 registration.

25 (g) A violation of the provisions of this section is a ground for
26 disciplinary action.

27 SEC. 5. Section 8422 of the Civil Code is amended to read:

28 8422. (a) Except as provided in subdivisions (b) and (c),
29 erroneous information contained in a claim of lien relating to the
30 claimant's demand, credits and offsets deducted, the work
31 provided, or the description of the site, does not invalidate the
32 claim of lien.

33 (b) Erroneous information contained in a claim of lien relating
34 to the claimant's demand, credits and offsets deducted, or the work
35 provided, invalidates the claim of lien if the court determines either
36 of the following:

37 (1) The claim of lien was made with intent to defraud.

38 (2) An innocent third party, without notice, actual or
39 constructive, became the bona fide owner of the property after
40 recordation of the claim of lien, and the claim of lien was so

1 deficient that it did not put the party on further inquiry in any
2 manner.

3 (c) Any person who shall willfully include in a claim of lien
4 labor, services, equipment, or materials not furnished for the
5 property described in the claim, shall thereby forfeit the person's
6 lien.

7 SEC. 6. Section 66499.7 of the Government Code is amended
8 to read:

9 66499.7. The security furnished by the subdivider shall be
10 released in whole or in part in the following manner:

11 (a) Security given for faithful performance of any act or
12 agreement shall be released upon the performance of the act or
13 final completion and acceptance of the required work. The
14 legislative body may provide for the partial release of the security
15 upon the partial performance of the act or the acceptance of the
16 work as it progresses, consistent with the provisions of this section.
17 The security may be a surety bond, a cash deposit, a letter of credit,
18 escrow account, or other form of performance guarantee required
19 as security by the legislative body that meets the requirements as
20 acceptable security pursuant to law. If the security furnished by
21 the subdivider is a documentary evidence of security such as a
22 surety bond or a letter of credit, the legislative body shall release
23 the documentary evidence and return the original to the issuer upon
24 performance of the act or final completion and acceptance of the
25 required work. In the event that the legislative body is unable to
26 return the original documentary evidence to the issuer, the security
27 shall be released by written notice sent by certified mail to the
28 subdivider and issuer of the documentary evidence within 30 days
29 of the acceptance of the work. The written notice shall contain a
30 statement that the work for which the security was furnished has
31 been performed or completed and accepted by the legislative body,
32 a description of the project subject to the documentary evidence
33 and the notarized signature of the authorized representative of the
34 legislative body.

35 (b) At the time that the subdivider believes that the obligation
36 to perform the work for which security was required is complete,
37 the subdivider may notify the local agency in writing of the
38 completed work, including a list of work completed. Upon receipt
39 of the written notice, the local agency shall have 45 days to review
40 and comment or approve the completion of the required work. If

1 the local agency does not agree that all work has been completed
2 in accordance with the plans and specifications for the
3 improvements, it shall supply a list of all remaining work to be
4 completed.

5 (c) Within 45 days of receipt of the list of remaining work from
6 the local agency, the subdivider may then provide cost estimates
7 for all remaining work for review and approval by the local agency.
8 Upon receipt of the cost estimates, the local agency shall then have
9 45 days to review, comment, and approve, modify, or disapprove
10 those cost estimates. No local agency shall be required to engage
11 in this process of partial release more than once between the start
12 of work and completion and acceptance of all work; however,
13 nothing in this section prohibits a local agency from allowing for
14 a partial release as it otherwise deems appropriate.

15 (d) If the local agency approves the cost estimate, the local
16 agency shall release all performance security except for security
17 in an amount up to 200 percent of the cost estimate of the
18 remaining work. The process allowing for a partial release of
19 performance security shall occur when the cost estimate of the
20 remaining work does not exceed 20 percent of the total original
21 performance security unless the local agency allows for a release
22 at an earlier time. Substitute bonds or other security may be used
23 as a replacement for the performance security, subject to the
24 approval of the local agency. If substitute bonds or other security
25 is used as a replacement for the performance security released, the
26 release shall not be effective unless and until the local agency
27 receives and approves that form of replacement security. A
28 reduction in the performance security, authorized under this section,
29 is not, and shall not be deemed to be, an acceptance by the local
30 agency of the completed improvements, and the risk of loss or
31 damage to the improvements and the obligation to maintain the
32 improvements shall remain the sole responsibility of the subdivider
33 until all required public improvements have been accepted by the
34 local agency and all other required improvements have been fully
35 completed in accordance with the plans and specifications for the
36 improvements.

37 (e) The subdivider shall complete the works of improvement
38 until all remaining items are accepted by the local agency.

1 (f) Upon the completion of the improvements, the subdivider,
2 or his or her assigns, shall be notified in writing by the local agency
3 within 45 days.

4 (g) Within 45 days of the issuance of the notification by the
5 local agency, the release of any remaining performance security
6 shall be placed upon the agenda of the legislative body of the local
7 agency for approval of the release of any remaining performance
8 security. If the local agency delegates authority for the release of
9 performance security to a public official or other employee, any
10 remaining performance security shall be released within 60 days
11 of the issuance of the written statement of completion.

12 (h) Security securing the payment to the contractor, his or her
13 subcontractors and to persons furnishing labor, materials or
14 equipment shall, after passage of the time within which claims of
15 lien are required to be recorded pursuant to Article 2 (commencing
16 with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4
17 of the Civil Code and after acceptance of the work, be reduced to
18 an amount equal to the total claimed by all claimants for whom
19 claims of lien have been recorded and notice thereof given in
20 writing to the legislative body, and if no claims have been recorded,
21 the security shall be released in full.

22 (i) The release shall not apply to any required guarantee and
23 warranty period required by Section 66499.9 for the guarantee or
24 warranty nor to the amount of the security deemed necessary by
25 the local agency for the guarantee and warranty period nor to costs
26 and reasonable expenses and fees, including reasonable ~~attorneys'~~
27 *attorney's* fees.

28 (j) The legislative body may authorize any of its public officers
29 or employees to authorize release or reduction of the security in
30 accordance with the conditions hereinabove set forth and in
31 accordance with any rules that it may prescribe.

32 (k) This section shall remain in effect only until January 1, 2016,
33 and as of that date is repealed, unless a later enacted statute, that
34 is enacted before January 1, 2016, deletes or extends that date.

35 SEC. 7. This act shall be operative on July 1, 2012.